

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LALA MOGADEM,

Plaintiff,

v.

STATE BAR OF CALIFORNIA, ET AL.,

Defendant.

No. 2:23-cv-00981-KJM-CKD (PS)

FINDINGS AND RECOMMENDATIONS TO
DISMISS FOR FAILURE TO PROSECUTE;
ORDER STAYING MOTION PRACTICE

On May 24, 2023, plaintiff filed a complaint against defendants, and moved to proceed in forma pauperis.¹ (ECF Nos. 1, 2.) On October 24, 2023, the court granted plaintiff's IFP request and, after screening plaintiff's complaint, found that plaintiff failed to state a claim for relief. (ECF No. 3.) Plaintiff was granted 28 days to file an amended complaint or request voluntary dismissal, and was expressly warned that failure to timely comply may result in dismissal with prejudice. (Id.) A copy of this order was mailed to plaintiff, but was returned as undeliverable. (See Docket Entry for November 21, 2023.) Plaintiff did not file an amended complaint. (See Id.) Thus, the Court recommends dismissal with prejudice.

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¹ Plaintiff represents herself in this action without the assistance of counsel; thus, this case proceeds before the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

Legal Standard

Eastern District Local Rule 183(a) provides, in part:

Any individual representing himself [] without an attorney is bound by the Federal Rules of Civil or Criminal Procedure, these Rules, and all other applicable law. All obligations placed on “counsel” by these Rules apply to individuals appearing in propria persona. Failure to comply therewith may be ground for dismissal, judgment by default, or any other sanction appropriate under these Rules.

See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the same rules of procedure that govern other litigants”) (overruled on other grounds). A district court may impose sanctions, including involuntary dismissal of a plaintiff’s case pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground for dismissal.”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with any order of the court.”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam) (stating that district courts have inherent power to control their dockets and may impose sanctions including dismissal or default).

A court must weigh five factors in determining whether to dismiss a case for failure to prosecute, failure to comply with a court order, or failure to comply with a district court’s local rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

- (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.

Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002).

1 **Analysis**

2 Here, the first two factors weigh in favor of dismissal, because this case has already been
3 delayed by plaintiff's failure to take the steps necessary to move this case forward. The third
4 factor also slightly favors dismissal, because, at a minimum, defendants have been deprived of an
5 opportunity to be promptly notified of the lawsuit and prepare their defense. With the passage of
6 time, witnesses' memories fade and evidence becomes stale.

7 Furthermore, the fifth factor, availability of less drastic alternatives, favors dismissal,
8 because the order granting plaintiff leave to amend was returned as undeliverable, and plaintiff
9 has not informed the court of any other address. The court thus has little alternative but to
10 recommend dismissal. See Carey, 856 F.2d at 1440-41 (affirming dismissal for failure to comply
11 with local rule requiring pro se plaintiffs to keep court apprised of address; noting that, without a
12 current address, district court could not threaten litigant with lesser sanctions when such order of
13 sanctions or to show cause "would only find itself taking a round trip tour through the United
14 States mail").

15 Finally, as to the fourth factor, the public policy favoring disposition of cases on their
16 merits, that factor is outweighed by the other Ferdik factors. Indeed, it is plaintiff's own failure to
17 prosecute the case and comply with the rules that precludes a resolution on the merits.

18 Therefore, after carefully evaluating the Ferdik factors, the court concludes that dismissal
19 is appropriate.

20 **RECOMMENDATIONS**

21 Accordingly, IT IS HEREBY RECOMMENDED that:

- 22 1. The action be dismissed pursuant to Federal Rule of Civil Procedure 41(b); and
23 2. The Clerk of Court be directed to close this case.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
26 days after being served with these findings and recommendations, any party may file written
27 objections with the court and serve a copy on all parties. Such a document should be captioned
28 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections

1 shall be served on all parties and filed with the court within fourteen (14) days after service of the
2 objections. The parties are advised that failure to file objections within the specified time may
3 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
4 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

5 **ORDER**

6 In light of those recommendations, IT IS ALSO HEREBY ORDERED that all pleading,
7 discovery, and motion practice in this action are stayed pending resolution of the findings and
8 recommendations. With the exception of objections to the findings and recommendations and
9 any non-frivolous motions for emergency relief, the court will not entertain or respond to any
10 motions and other filings until the findings and recommendations are resolved.

11 Dated: February 6, 2024



12 CAROLYN K. DELANEY
13 UNITED STATES MAGISTRATE JUDGE

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